

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

July 5, 2007

A meeting of the Board of Environmental Protection was held on Thursday, July 5, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott and Nancy Ziegler. Board member M. Wing Goodale arrived at approximately 10:10 a.m.

Board members Nancy Anderson and Nancy Ziegler departed at 12:07 p.m.
Board member Elizabeth Ehrenfeld departed at approximately 12:43 p.m.

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| <u>Staff:</u> | Bureau of Land and Water Quality | Dana Murch |
| | Bureau of Land and Water Quality | Mike Mullen |
| | Bureau of Land and Water Quality | Chris Redmond |
| | Bureau of Land and Water Quality | Andy Fisk |
| | Bureau of Land and Water Quality | Jennifer Cayer |
| | Bureau of Air Quality | Jim Brooks, Director |

Others: David P. Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General
Carol Blasi, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:00 p.m.)

The meeting convened at 9:00 a.m. for closing arguments in the matter of:

1. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; Livermore Falls Publicly Owned Treatment Works ME 0100315 and W 002654-5L-G-R; and Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (Closing Arguments by the parties) – no documentation provided to the Board

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Commissioner Littell welcomed Ms. Lessard and noted her work for the Town of Hampden including matters associated with the landfill.

Quoddy Bay LLC: On July 2, 2007, the Department accepted the applications of Quoddy Bay LLC for construction and operation of a liquefied natural gas facility for processing. The Department anticipates seeking Board jurisdiction at the regular meeting on August 2nd.

Rulemaking: Commissioner Littell noted that the Department continues to work on the implementation of rules associated with recent Legislative activity including: (1) Outdoor Wood Boilers – a draft rule will be presented for consideration by the Board to formerly enter into the rulemaking process, and (2) In-Stream Flow rules for final adoption.

Water Quality Initiatives: Barbary Creek -- The Department recently received EPA approval of the proposed Total Maximum Daily Load (TMDL) for Barbary Creek, So. Portland. This particular TMDL is unique because of its use of impervious area in the watershed as a surrogate for allowable load as opposed to setting numeric standards.

Long Creek, So Portland -- A stakeholder group will look at setting a TMDL standard to bring this creek into compliance with its water classification. It is possible that the Department will find that use of impervious watershed area is a suitable method for this resource.

East Pond, Oakland – The Department is working with the University of Maine on implementation of the TMDL to achieve attainment. The TMDL uses an innovative approach; namely, the removal of perch and other fish species. The Department has removed 9.4 tons of perch and will be monitoring during the next year to determine progress toward achieving water quality standards.

Ozone: The Department identified spring ozone and particulate exceedence notices. The high level of ozone may have been influenced by the fact that there is no vegetation on trees. Particulate matter from fires in the south in conjunction with wind direction were major contributors to these exceedences. If this current trend continues, Maine's attainment status for ozone may become compromised. The U.S. Environmental Protection Agency is considering a more stringent ozone standard based on input from states including Maine. If a new standard is adopted, Maine would not be in attainment as a result of these recent exceedences.

QUESTIONS:

Board member Matt Scott asked where the fish from East Pond was are being disposed of.
The removed fish waste is being disposed of at licensed composting facilities.

Board member Ernest Hilton asked what technique is used to remove a particular fish species from a water body.
A netting technique is being used.

Board member Wing Goodale asked about the cause of the high nutrient levels in the pond.
This area remains largely developed for camp-type use. Non-point source pollution from run-off of poorly maintained roads and impacts from new development are the largest contributors to the nutrient levels. The Department is working with individuals on soil erosion practices to address many of these impacts.

B. COMMENTS FROM THE BEP CHAIR:

The Chair reminded Board members that the public hearing concerning Downeast LNG's application for a liquefied natural gas facility will require the entire week of July 16th.

C. EXECUTIVE ANALYST COMMENTS: Ms. Bertocci noted that Sunday would be dedicated to a Board site visit, allowing the hearing to begin at 9:00 on Monday, July 16th.

D. BOARD CALENDAR: REVIEWED

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (10-0-0-0) to approve consent agenda items 1, 3, 4, 5, and 6 as presented.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion.

1. ERIC CLARK INDUSTRIES, INC., Portland – Administrative Consent Agreement (BLWQ - Water)
3. MICHAEL SCANNON and JAY ABBOTS, Boothbay – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
4. HANLEY CONSTRUCTION, INC., Bristol – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
5. JOHN GETCHELL, St. Albans – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
6. BRANDIE HALLEE, Winslow – Administrative Consent Agreement (BLWQ – Land)

II CONSENT AGENDA ITEMS (CONT.)

Board voted (10-0-0-0) to table consent agenda item 2 for the purpose of obtaining additional detail concerning the scope of the project associated with the after-the-fact permit.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion.

2. JOHN LANE, Saco – Administrative Consent Agreement and Enforcement Order (BLWQ - Water)

Board voted (6-4-0-0) to approve consent agenda item 7 as presented.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, Virginia Plummer, and Matt Scott voted to support the motion. Board members Nancy Anderson, Elizabeth Ehrenfeld, Ernest Hilton and Nancy Ziegler voted opposed.

7. MAINE TREE MANAGEMENT, INC. – New Vineyard – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

III. Regular Agenda

2. KENNEBEC RIVER PETITIONS FOR REVOCATION, MODIFICATION OR SUSPENSION / LOCKWOOD, HYDRO-KENNEBEC, SHAWMUT AND WESTON HYDRO PROJECTS (decision)

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (6-0-4-0) on a motion to approve the revised draft decision document declining to take any action to revoke, modify or suspend the permits and water quality certifications for the hydropower projects, with the following minor changes to the draft decision:

Page 6 / 1st paragraph

..However, the Board understands s the compliance orders ...

Page 6 / 3rd paragraph:

...problem in Maine and elsewhere, as evidenced by the State's fish consumption advisories,...

Page 9 / Section 8. Legal Effect of Modifying a Water Quality Certification...

...conditions that specifically reserve the Department's right to "reopen" the certification...

The vote was taken pursuant to 38 M.R.S.A. section 341-D(3) and 06-096 CMR Chapter 20, Regulations for Hearings on Applications.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Ernest Hilton, Richard Gould, Don Guimond and Nancy Ziegler voted to support the motion. Board members Sue Lessard, Virginia Plummer, M. Wing Goodale, and Matt Scott abstained.

3. CHAPTER 150, CONTROL OF EMISSIONS FROM OUTDOOR WOOD BOILERS / NEW (briefing and post to public hearing)

Staff: Jim Brooks, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to post new Chapter 150, Control of Emissions from Outdoor Wood Boilers to public hearing on August 16, 2007 and establish the deadline for written public comments of August 31, 2007. The vote was taken pursuant to 38 M.R.S.A. sections 341-D(1-B), 585-A, and 610-B.

Board members Elizabeth Ehrenfeld, Ernest Hilton, Richard Gould, M. Wing Goodale, Don Guimond, Sue Lessard, Virginia Plummer, and Matt Scott voted to support the motion. Board members Nancy Anderson and Nancy Ziegler were absent.

4. CHAPTER 587 IN-STREAM FLOW AND LAKE AND POND WATER LEVELS / NEW (final adoption)

Staff: Andrew Fisk, Director Bureau of Land and Water Quality

The Board voted (7-0-1-2) on a motion to adopt Chapter 587 In-stream Flow and Lake and Pond Water Levels as presented. The vote was taken pursuant to 38 M.R.S.A. sections 341-D(1-B) and 470-H.

Board members Elizabeth Ehrenfeld, Ernest Hilton, Richard Gould, M. Wing Goodale, Don Guimond, Virginia Plummer, and Matt Scott voted to support the motion. Board member Sue Lessard abstained. Board members Nancy Anderson and Nancy Ziegler were absent.

THE BOARD RECONVENED AT 1:30 TO CONSIDER THE REMAINDER OF THE REGULAR AGENDA

5. DOWNEAST LNG, DOWNEAST PIPELINE LLC // ROBBINSTON Site Location of Development L-23432-26-A-N, Natural Resources Protection Act L-23432-TG-B-N, Air Emissions A-000960-71-A-N, Section 401 Water Quality Certification and Coastal Zone Management (Appeal of Third Procedural Order)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

Staff: Jennifer Cayer, Bureau of Land and Water Quality

Note: Downeast LNG withdrew its appeal based on clarifications provided in the Board's 4th Procedural Order.

The Board voted (7-0-0-3) on a motion to deny the appeal of Save Passamaquoddy Bay et al. and affirm the Third Procedural Order with respect to the decision to strike the testimony of James Fay. The vote was taken pursuant to 38 M.R.S.A. section 341-D (2) and 06 096 CMR Chapter 30, Special Rules for Hearings on Applications of Significant Public Interest.

Board members Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, and Matt Scott voted to support the motion. Board members Nancy Anderson, Nancy Ziegler and Elizabeth Ehrenfeld were absent.

The Board voted (2-5-0-3) on a motion to grant the appeal submitted by Save Passamaquoddy Bay et al. and allow the pre-filed direct testimony of Dale Mitchell (Tab 47). Motion failed.

Board members Ernest Hilton and M. Wing Goodale voted to support the motion. Board members Richard Gould, Don Guimond, Sue Lessard, Virginia Plummer, and Matt Scott voted opposed. Board members Nancy Anderson, Elizabeth Ehrenfeld and Nancy Ziegler were absent.

The Board voted (5-2-0-3) on a motion to deny the appeal submitted by Save Passamaquoddy Bay et al. and affirm the Board's Third Procedural Order which strikes the testimony of Dale Mitchell (Tab 47).

Board members Richard Gould, Don Guimond, Virginia Plummer, Sue Lessard and Matt Scott voted to support the motion. Board members Ernest Hilton and M. Wing Goodale voted opposed. Board members Nancy Anderson, Elizabeth Ehrenfeld and Nancy Ziegler were absent.

The Board voted (5-2-0-3) on a motion to deny the appeal submitted by Save Passamaquoddy Bay et al. and affirm the Board's Third Procedural Order which strikes the pre-filed direct testimony of Reid Brown (Tab 50).

Board members Richard Gould, Don Guimond, Sue Lessard, Virginia Plummer, and Matt Scott voted to support the motion. Board members Ernest Hilton and M. Wing Goodale voted opposed. Board members Nancy Anderson, Elizabeth Ehrenfeld and Nancy Ziegler were absent.

The Board voted (5-2-0-3) on a motion to deny the appeal submitted by Save Passamaquoddy Bay et al. and affirm the Board's Third Procedural Order which strikes the pre-filed direct testimony of Sonny Flynn (Tab 52).

Board members Richard Gould, Don Guimond, Sue Lessard, Virginia Plummer and Matt Scott voted to support the motion. Board members Ernest Hilton and M. Wing Goodale voted opposed. Board members Nancy Anderson, Elizabeth Ehrenfeld and Nancy Ziegler were absent.

The Board voted (5-2-0-3) on a motion to deny the appeal submitted by Save Passamaquoddy Bay et al. and affirm the Board's Third Procedural Order which strikes the pre-filed direct testimony of Tom Beckerton (Tab 49).

Board members Richard Gould, Don Guimond, Sue Lessard, Virginia Plummer and Matt Scott voted to support the motion. Board members Ernest Hilton and M. Wing Goodale voted opposed. Board members Nancy Anderson Elizabeth Ehrenfeld and Nancy Ziegler were absent.

All above votes were taken pursuant to 38 M.R.S.A. section 341-D(2) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

6. DOWNEAST LNG, DOWNEAST PIPELINE LLC/ ROBBINSTON Site Location of Development L-23432-26-A-N, Natural Resources Protection Act L-23432-TG-B-N, Air Emissions A-000960-71-A-N, Section 401 Water Quality Certification and Coastal Zone Management (Appeal of Fourth Procedural Order)

The Board voted (7-0-0-3) on a motion deny the appeal submitted by Save Passamaquoddy Bay et al. and affirm the Board's Fourth Procedural Order which denied the request for subpoena of staff from the following state agencies: Department of Marine Resources, Dept. Inland Fisheries and Wildlife, Atlantic Salmon Commission, Department of Conservation and Department of Transportation. The vote was taken pursuant to 38 M.R.S.A. section 341-D (2) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest. *Board members Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, and Matt Scott voted to support the motion. Board members Nancy Anderson, Elizabeth Ehrenfeld and Nancy Ziegler were absent.*

*Next Regular Meeting –Thursday, August 2, 2007 – **Holiday Inn / Ground Round***